

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
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REPLY COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

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The United States Telecom Association (USTA)¹ submits its reply comments through the undersigned in the above-referenced docket regarding the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board)² concerning the process for designation of eligible telecommunications carriers (ETCs) and the Federal Communications Commission's (Commission's or FCC's) rules regarding high cost universal service support.

INTRODUCTION AND SUMMARY

In these reply comments, USTA urges the Commission to find that all lines – not just primary lines – should receive universal service support; to issue mandatory requirements for designation of an ETC; to conclude that there should be only one ETC in a high cost area, or that there is a rebuttable presumption that there should only be one such ETC; to clarify that competition is not a central goal of federal universal service; to find that the Universal Service Fund should not be capped; to reiterate that all carriers seeking any universal service support – whether from the high cost mechanism, the low income mechanism, or both mechanisms – must

¹ USTA is the nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data, and video services over wireline and wireless networks.

² *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257 (2004) (Recommended Decision).

obtain ETC status under section 214(e) of the Telecommunications Act of 1996; and to modify its rules governing the calculation of high cost support to be provided to competitive ETCs that provide service over unbundled network elements.

DISCUSSION

The importance of and interest in this proceeding is evident by the sheer number of parties that filed comments. USTA believes the comments provide the Commission with clear direction on how to address the Joint Board's recommendations. There was almost unanimous opposition to the Joint Board's proposal to implement a primary line limitation on who could receive universal service support and there was overwhelming support for the Joint Board's proposal to strengthen the process for designating an eligible telecommunications carrier (ETC). With that, USTA reiterates the crux of its comments that all lines should be supported, not just primary lines,³ and the process for designating ETCs should be strengthened by adopting most of the guidelines proposed by the Joint Board as mandatory requirements. In the remainder of these reply comments USTA will elaborate on additional points made in its comments and address a number of points raised by different commenters.

I. There Should Be Only One ETC In A High Cost Area.

USTA emphasized in its comments that there is no economic justification for supporting more than one carrier as an ETC in a high cost area,⁴ and USTA maintains that there should only be one ETC eligible for universal service support in such areas. Still, USTA recognizes that all carriers should be able to make a showing why it would be in the public interest to designate

³ As USTA explained in its comments, services ride over networks and networks cannot be built, maintained, expanded, or improved if support is only provided to primary lines.

⁴ See USTA Comments at 2.

them as an ETC. Accordingly, USTA supports the proposal advocated by Verizon in its comments that the Commission should establish a rebuttable presumption that it is not in the public interest to have more than one ETC in high cost areas and that carriers seeking competitive ETC (CETC) status should have a heavy burden to overcome that presumption.⁵ Overcoming that presumption must entail demonstration by the ETC applicant that it has complied with or achieved certain designation requirements. Similarly, state commissions, or the Commission when applicable, should demonstrate that any designation of an additional ETC is not made solely on the basis of promoting competition and that other public interest goals were taken into consideration.

II. The Commission Has The Authority To Establish Mandatory Requirements For Designating An ETC

USTA advocated in its comments that any public interest determination of whether to grant ETC status to additional carriers in high cost areas must at least be based on verification by the ETC applicant that it has complied with or achieved certain *mandatory* ETC designation requirements. USTA urges the Commission to adopt mandatory ETC designation requirements and elaborates here that the Commission has the authority, pursuant to several sections of the Telecommunications Act of 1996 (Act), to adopt mandatory requirements. Specifically, section 214(e)(1)(A) identifies a list of services⁶ that an ETC applicant must provide. In order to provide such services, it is inherent that the carrier must have the financial and technical ability to provide the services and must offer them according to some minimum standard of quality and

⁵ See Verizon Comments at 9.

⁶ The list of services include single-party service, voice grade access to the public switched network, DTMF signaling or its functional equivalent, access to emergency services, access to operator services, access to interexchange services, access to directory assistance, and toll limitation services for qualifying low-income consumers. See 47 U.S.C. §214(e)(1)(A).

quantity. More specifically, for the services listed in section 214(e)(1)(A) to have any meaning as qualifications for ETC status, they must be defined by standards. As the expert agency in interpreting the terms of the Act, the Commission is empowered to define the standards by which financial and technical ability, as well as minimum quality and quantity, will be determined. Similarly, section 214(e)(4), which permits an existing ETC to relinquish its ETC status in areas served by more than one ETC, requires a state commission to ensure that all customers will continue to be served before the relinquishing ETC relinquishes its ETC status. In order to do this, the remaining ETC must have already demonstrated its ability to comply with the requirements of section 214(e)(1)(A), which, again, must be based on compliance with underlying standards for such services. Finally, USTA also agrees with TDS Telecommunications Corporation (TDS) that the “Universal Service Fund is a federally-administered creation of the Act, and Section 201(b) of the Act ‘*explicitly* gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies,’ even where those rules might affect the exercise of state regulatory jurisdiction under the Act.”⁷ Accordingly, the Commission has the authority to specify requirements for when a state commission may designate a carrier as an ETC, making it eligible for receipt of universal service support.⁸

⁷ TDS Comments at 7, *quoting AT&T Corp. v. Iowa Util. Bd.*, 525 U.S. 366, 380 (1999) (emphasis in original).

⁸ USTA maintains that support should not automatically be provided to a carrier simply because it has been designated as an ETC. The Act sets forth a two-step process for receipt of universal service funds. Specifically, section 254(e) suggests that a carrier must first be designated as an ETC and only after such designation does it become *eligible* for receipt of universal service support. In other words, first a carrier must be designated as an ETC and then the Commission should determine whether or not to provide support to the ETC.

III. The Commission Should Clarify That Competition Is Not A Central Goal Of Federal Universal Service.

The Commission should issue a directive to state commissions that competition is not a central goal of universal service or the purpose of providing federal universal service support. The importance of such a directive from the Commission cannot be overstated in light of the comments filed by the California Public Utilities Commission, which stated that California's universal service goals include providing "consumers choice among competitive telephone companies."⁹ While California is free to set whatever goals it wants in order to distribute state universal service funds, such is not the case with regard to designating ETCs for receipt of federal universal service funds. The goal of federal universal service is succinctly stated in section 254(b)(3) of the Act: "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."¹⁰ Competition may be considered as a principle in determining whether universal service is being preserved and advanced¹¹ and a factor in a public interest analysis of an ETC application,¹² but it is clearly not a central goal of federal universal

⁹ California PUC Comments at 6.

¹⁰ 47 U.S.C. §254(b)(3).

¹¹ See 47 U.S.C. §254(b)(7).

¹² The Commission has stated that "in determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, [it] weigh[s] numerous factors, including the benefits of increased competitive choice" *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Memorandum Opinion and

service. It is unclear from the California PUC's comments whether it applies its state's universal service goals when making ETCs designations for receipt of federal funds, but even if it does not, a clear directive from the Commission is worthwhile to ensure that all states take into consideration federal universal service goals and apply federal standards when designating ETCs that may receive federal funds.

IV. Implementing A Primary Line Plan Would Be A Dangerous Regulatory Experiment.

USTA agrees with TDS that consumers who rely on the Universal Service Fund (USF or Fund), by obtaining their telecommunications services from carriers that build, maintain, expand, and improve their networks with support from the USF, "cannot afford the risks of . . . a dangerous regulatory experiment."¹³ Yet, consumers in high cost areas would be subject to such risks if the Commission implements the Joint Board's primary line proposal. The greatest and most obvious risk is that a primary line plan will fail and consumers will be left without service that is affordable and reliable or without service at all.

USTA believes there are numerous contributing factors that would cause a primary line plan to fail or seriously flounder, with the result being that consumers are subject to such risks. In addition to the many problems that USTA cited in its comments regarding a primary line plan and the numerous reasons why a primary line plan is unworkable, USTA agrees with the points raised by TDS in its comments.

Order, CC Docket No. 96-45, FCC 03-338, ¶4 (rel. Jan. 22, 2004) (Virginia Cellular Order). In the Virginia Cellular Order the Commission also concluded that the "value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas." *Id.*

¹³ TDS Comments at 23.

Adoption of a primary line plan would cause consumer confusion and frustration: consumers would need to be educated about how primary lines work; they could encounter administrative hassles when implementing their primary line choices; they could be subjected to aggressive and possibly misleading marketing campaigns as carriers lobby for a consumer's primary line choice; they could be slammed; they could be required to divulge sensitive personal information; they would likely encounter increases, and possibly prohibitive increases, in prices for secondary lines; and they may be forced to relinquish secondary lines due to such price increases.¹⁴

Similarly, a primary line plan would impose administrative and financial burdens on carriers and threaten their networks: carriers may be unable to build, maintain, expand, or improve networks; the scope and/or quality of their services offered may decline; they may be forced to increase rates, particularly for secondary lines; and they may incur additional company expenses to file revised tariffs for increased rates, to hire and train employees in order to educate consumers about the primary line plan and assist them with implementation and updates, to register and track primary line elections, to implement measures to prevent violation of the Commission's customer proprietary network information (CPNI) rules, and to modify billing systems.¹⁵ Equally important, adoption of a primary line plan would threaten the financial viability of many carriers providing service in high cost areas because their company revenue flows are projected from all lines, not just primary lines. Importantly, the result of such financial distress may be to put at risk billions of dollars that have been provided to such carriers through federal government loans by the Rural Utilities Service.

¹⁴ See *id.* at 18-22.

¹⁵ See *id.*

Finally, a primary line plan would impose significant administrative and cost burdens on regulatory agencies (federal and state) and other affiliated entities (notably the Universal Service Administrative Company (USAC)), by requiring increased involvement in educational efforts, efforts to monitor and address fraud and mismanagement of primary line elections, actions to address any CPNI violations, disbursement of funds, and review of revised tariffs if carriers increase prices for secondary lines.¹⁶ Notably, USAC verifies in its comments many of the issues with which USTA is concerned: that USAC would have to collect substantially more data than it does today, which would increase its administrative expenses; that it may need to collect customer-specific information, which may entail establishing direct relationships with end-user consumers; that data submitted would have to be updated periodically, which would require it to increase its staff and to develop new business processes and procedures; that it would be required to participate in dispute resolution between carriers vying for primary line status, which would significantly expand its responsibilities; that it would need to track reported slamming incidents and refer them to the Commission, also expanding its responsibilities; and that it would have to undertake significant outreach efforts to educate carriers and consumers.¹⁷ Moreover, USAC notes that these actions and additional resources are not an exhaustive list and estimates that these efforts would require at least one year to implement.¹⁸ The Commission should be sensitive to and heed the comments of USAC that these administrative and cost burdens are real and significant.

¹⁶ *See id.*

¹⁷ *See* USAC Comments at 7-12.

¹⁸ *See id.* at 12-13.

V. The High Cost Fund Should Not Be Capped.

The Public Utility Commission of Oregon proposes that the USF contribution factor should be capped as a short-term measure – for two years – to control growth of the Fund and further that such resources should then be allocated to the states by reducing ETC support in each state by an equal percentage so that total high cost support remains at its base year level.¹⁹

USTA opposes this proposal, despite the Oregon PUC's claim that capping would remove "any incentive for a state commission to approve ETC applications primarily because it increases total high cost support for the state,"²⁰ because it violates the sufficiency requirement of the Act. A capped contribution factor results in a capped Fund and a capped Fund that is allocated among carriers cannot ensure that such carriers will receive sufficient support to build, maintain, expand, or improve networks in order to ensure that there is specific or predictable universal service. Yet, section 254(b)(5) states that "[t]here should be specific, predictable and *sufficient* Federal and State mechanisms to preserve and advance universal service."²¹ For this reason alone, the Commission should not entertain the Oregon PUC's proposal to cap the contribution factor.

¹⁹ See Oregon PUC Comments at 8.

²⁰ *Id.* Notably, USTA previously raised in its comments this concern that states will readily grant ETC designations as a means of bringing additional federal universal service money into the state. See USTA Comments at 5.

²¹ 47 U.S.C. §254(b)(5) (emphasis added).

VI. The Commission Should Not Establish Separate ETC Designations For The High Cost And Low Income Support Mechanisms.

AT&T asks the Commission in its Comments, and also in a separate Petition for Limited Reconsideration,²² to establish separate ETC designations for the high cost and low income support mechanisms, claiming that the support mechanisms serve very different purposes and that the Commission's policies that require a carrier to be certified as an ETC for both low income and high cost support are not competitively neutral and discourage competitive entry.²³ USTA opposes such a separation regarding ETC designations and urges the Commission to deny AT&T's request both here and in its Petition.

The Commission has already clearly addressed the issue raised by AT&T's request in its Lifeline and Link-Up Order.²⁴ In that Order, the Commission stated it agreed "with the Joint Board that [it] should decline to establish rules that would provide Lifeline/Link-Up support directly to carriers that are not ETCs. Contrary to AT&T's assertion, establishing such rules would be inconsistent with section 254(e), which states that only ETCs may receive universal service support."²⁵ More specifically, section 254(e) states that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."²⁶ Neither section 214(e) nor section 254(e) provides that a carrier can seek a limited ETC designation, qualifying only for support from one of the support

²² See *Lifeline and Link-Up*, Petition of AT&T Corp. for Limited Reconsideration, WC Docket No. 03-109 (filed July 21, 2004) (Petition).

²³ See AT&T Comments at 29-31.

²⁴ See *Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 03-109, FCC 04-87 (rel. Apr. 29, 2004) (Lifeline and Link-Up Order).

²⁵ *Id.*, ¶54.

²⁶ 47 U.S.C. §254(e).

mechanisms. Rather, in order to receive any support – whether it is from the low income mechanism, the high cost mechanism, or both mechanisms – a carrier must comply with the designation process set forth in section 214(e).

In addition to these requirements of the Act, which dictate a denial of AT&T's request, there are also important policy reasons to deny the request. First, bifurcating the ETC designation process as AT&T envisions would enable CETCs to cherry pick low cost Lifeline consumers, siphoning off implicit support embedded in urban, residential retail rates.²⁷ This would provide a carrier like AT&T the full rate for the service they provide to the Lifeline customer in an urban area without any obligation to serve low income consumers in high cost rural areas. To provide AT&T or another carrier access to universal service fund support without requiring the carrier to assume the risks associated with carrier of last resort obligations and the requirement to serve any and all customers within its service area undermines the very foundation of the universal service system and the policies underlying section 214(e). Second,

²⁷ In its Ninth Report and Order, the Commission identified many forms of implicit support, explaining that “some state rate designs and, to a lesser extent, the federal interstate access charge system, have provided implicit high-cost support flowing from (1) *urban areas to rural areas*; (2) business customers to residential customers; (3) *vertical services to basic service*; and/or (4) long distance service to local service” and further explaining that “many states have adopted the practice of setting uniform local rates throughout the territory that a given company serves within the state, *thereby enabling incumbent LECs to charge above-cost rates in urban (low-cost) areas to support the below-cost rates they charge in rural (high-cost) areas.*” Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, FCC 99-306, ¶15 (rel. Nov. 2, 1999) (Ninth Report and Order) (emphasis added). Yet, the Commission also noted the Congressional intent that “federal universal service support mechanisms should, as far as possible, be *explicit*, as well as specific, predictable, and sufficient to preserve and advance universal service.” Ninth Report and Order, ¶18 (emphasis added). Similarly, the Commission cited the Joint Explanatory Statement of the Committee of Conference, that “[t]o the extent possible, the conferees intend that any support mechanisms continued or created under new section 254 should be *explicit, rather than implicit* as many support mechanisms are today.” Ninth Report and Order, fn.32, *citing* Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 131 (emphasis added).

bifurcating the ETC designation process might result in incentives for carriers to avoid providing Lifeline service while receiving high cost support. Certainly, providing a pathway for carriers to benefit from receiving federal high cost support without a corresponding obligation to participate in the Lifeline and Link-up programs – and make those benefits available to their customers – would not be in the spirit of long-standing universal service policies. Again, the Commission should deny AT&T’s request.

VII. The Commission Should Modify Its Rules For Calculating Support Received By Competitive ETCs Providing Service Over UNEs.

USTA agrees with BellSouth’s comments that the Commission should “modify its rules governing the calculation of high-cost support for competitive ETCs utilizing unbundled network elements (“UNEs”)”²⁸ so that there is competitive neutrality in the support that the incumbent local exchange carrier (ILEC) ETC receives and the support that the CETC receives for services provided over the ILEC’s UNE facilities.²⁹ USTA agrees with BellSouth that CETCs providing service using UNEs should not receive support that equals the full price of the UNEs (or their cost), which happens in many cases because the Commission’s rules provide such CETCs with support for the lesser of the UNE price or the per-line support amount available to the ILEC, particularly in light of the fact that ILEC ETCs receive only a percentage of the difference between their costs and the national average.³⁰ This is not competitive neutrality and the Commission’s rules should be modified to effectuate neutrality.

²⁸ BellSouth Comments at 11.

²⁹ *See id.* at 11-12.

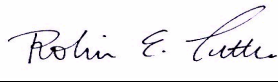
³⁰ *See id.*

CONCLUSION

For the reasons stated above and in USTA's previous comments, USTA continues to urge the Commission to issue mandatory requirements for designation of eligible telecommunications carriers and not to implement a primary line plan.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on September 21, 2004, the aforementioned Reply Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and were electronically mailed to the following:

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